Supreme Court, U. S.
FILED
FEB 1 1978
MICHAEL RODAK, JR., CLERK

IN THE
Supreme Court of the United States
OCTOBER TERM, 1977

Nos. 77-10, 77-11 and 77-47

EXXON CORPORATION AND
PHILLIPS PETROLEUM COMPANY,
SHELL OIL COMPANY,
GULF OIL CORPORATION,
Appellants,
v.

GOVERNOR OF THE STATE OF MARYLAND, *et al.*,
Appellees.

Appeal from the Court of Appeals of Maryland

OBJECTION OF APPELLANTS TO CALIFORNIA'S MOTION TO FILE TARDY AMICUS CURIAE BRIEF

(See inside cover for Counsel)

WILSON - EPES PRINTING CO., INC. - RE 7-6002 - WASHINGTON, D.C. 20001

Of Counsel:

Bernard J. Caillouet
Richard P. Delaney
Lauric J. Cusack
Exxon Corporation
P.O. Box 60626
New Orleans, Louisiana 70160

William L. Marbury
Lewis A. Noonberg
David F. Tufaro
Piper & Marbury
2000 First Maryland Building
25 South Charles Street
Baltimore, Maryland 21201

Robert L. Stern
Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604

Attorneys for Appellant
Exxon Corporation

Of Counsel:

Jerry Miller
Phillips Petroleum Company
P.O. Box 31690
Amarillo, Texas 79120

J. Edward Davis
Daniel T. Doherty, Jr.
Weinberg & Green
401 Washington Avenue
Suite 503
Towson, Maryland 21204

Attorneys for Appellant
Phillips Petroleum Company

Of Counsel:

A.M. Minotti
Shell Oil Company
One Shell Plaza
Houston, Texas 77002

William Simon
Robert G. Abrams
Mark W. Pennak
Howrey & Simon
1730 Pennsylvania Ave., N.W.
Washington, D. C. 20006

Attorneys for Appellant
Shell Oil Company

Lawrence S. Greenwald
Barry F. Rosen
Gordon, Feinblatt, Rothman,
Hoffberger & Hollander
1200 Garrett Building
Baltimore, Maryland 21202

Attorneys for Appellant
Gulf Oil Corporation

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Pursuant to Rule 42(3) of this Court's Rules, Appellants Exxon Corporation, Phillips Petroleum Company, Shell Oil Company and Gulf Oil Corporation, hereby object to the State of California's Motion for Leave to File Tardy Amicus Curiae Brief on the ground that California's motion is not permitted under this Court's Rules. Appellants further object to California's motion on the additional ground that the arguments California wishes to present do not pertain to the validity of the Maryland statute *sub judice*, but are directed to the validity of a materially different California statute not before this Court. California's arguments thus could not materially aid the Court in the disposition of this case.

Rule 42(3) of this Court's Rules states that where consent to a filing of an *amicus curiae* brief is refused by a party, "a motion to file may *timely* be presented to the court." (Emphasis supplied). Rule 42(2) provides that a "brief of an *amicus curiae* in cases before the court on the merits may be filed *only* after order of the court or when accompanied by the written consent of all parties to the case and *presented within the time allowed for the filing of the brief of the party supported.*" (Emphasis supplied). The brief of appellees was due to be filed and was filed December 17, 1977. California's motion was not received by appellants until January 30, 1978. California's motion is thus 45 days late. There is no provision in this Court's Rules which permits a motion to file such an untimely *amicus* brief. Indeed, such an untimely *amicus* brief can only disrupt the preparation of the parties for oral argument scheduled for February 28, 1978.

The sole reason given by California for the extraordinary lateness of its motion is that in an order filed December 27, 1977, the Court of Appeals for the Ninth Circuit vacated the submission of California's appeal in *Shell Oil Co.* v. *Younger*, (Docket No. 76-2784), pending a decision by this Court in the instant case. While acknowledging that the California statute is "different" than the Maryland statute *sub judice*, California contends that its views should be heard at this late date because it fears that this Court might "inadvertently" rule on California's case. (Motion at 2-3).

California's fears do not justify the extended tardiness of its motion. First, probable jurisdiction over the appeals was noted October 3, 1977. To the extent that California wished to address the validity of the Maryland statute, it had more than sufficient time to file a timely motion under Rule 42. Second, a decision by the Court in this case cannot be "dispositive" of California's appeal in the Ninth Circuit since the California statute is materially different from the Maryland statute. By seeking to argue the validity of its statute, California is, in effect, suggesting that this Court review the constitutionality of a statute not before it. This attempt to bypass the Ninth Circuit should be rejected.

CONCLUSION

For the foregoing reasons, California's Motion for Leave to File Tardy Amicus Curiae Brief should be denied.

Respectfully submitted,

Of Counsel:

Bernard J. Caillouet
Richard P. Delaney
Lauric J. Cusack
Exxon Corporation
P.O. Box 60626
New Orleans, Louisiana 70160

William L. Marbury
Lewis A. Noonberg
David F. Tufaro
Piper & Marbury
2000 First Maryland Building
25 South Charles Street
Baltimore, Maryland 21201

Robert L. Stern
Mayer, Brown & Platt
231 South LaSalle Street
Chicago, Illinois 60604

Attorneys for Appellant Exxon Corporation

Of Counsel:

Jerry Miller
Phillips Petroleum Company
P.O. Box 31690
Amarillo, Texas 79120

J. Edward Davis
Daniel T. Doherty, Jr.
Weinberg & Green
401 Washington Avenue
Suite 503
Towson, Maryland 21204

Attorneys for Appellant
Phillips Petroleum Company

Of Counsel:

A.M. Minotti
Shell Oil Company
One Shell Plaza
Houston, Texas 77002

William Simon
Robert G. Abrams
Mark W. Pennak
Howrey & Simon
1730 Pennsylvania Ave., N.W.
Washington, D. C. 20006

Attorneys for Appellant
Shell Oil Company

Lawrence S. Greenwald
Barry F. Rosen
Gordon, Feinblatt, Rothman,
Hoffberger & Hollander
1200 Garrett Building
Baltimore, Maryland 21202

Attorneys for Appellant
Gulf Oil Corporation

February 1, 1978

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